

EN BANC
NOT DESIGNATED FOR PUBLICATION

CA06-1333

June 6, 2006

ERNESTINE WILLIS
APPELLANT

v.

AN APPEAL FROM PULASKI
COUNTY CIRCUIT COURT
[No. CV2005-691]

CHARLIE DANIELS, LAND
COMMISSIONER and HAYBAR, INC. CIRCUIT JUDGE
APPELLEES

DISMISSED

PER CURIAM

This appeal, which follows entry of summary judgment, must be dismissed for lack of a final order because the trial court did not dispose of a counterclaim filed by appellee Haybar, Inc.

Appellant Ernestine Willis owned property in Pulaski County. That property was certified to the State for delinquent taxes. Haybar purchased the property from the State and received a tax deed from appellee Daniels, the Commissioner of State Lands, in June 2001.¹

¹Daniels was the Commissioner when the property was conveyed to Haybar in 2001. Mark Wilcox became the Commissioner in January 2003. Pursuant to Ark. R. Civ. P. 25(d), when a public officer is a party to an action in his official capacity and during its pendency ceases to hold that office, the action does not abate and his successor is automatically substituted as a party. *See Fisher v. Chavers*, 351 Ark. 318, 92 S.W.3d 30 (2002).

On January 19, 2005, Willis filed a petition seeking to set aside the tax sale and redeem the property pursuant to Ark. Code Ann. § 26-37-305(a) (Supp. 2005), which provides that an insane person shall have two years after the removal of the disability to redeem the property. Willis asserted that, since September 1992, she had been diagnosed with bipolar disorder and other mental illnesses so as to come within the reach of the statute. She also asserted that she had been involuntarily committed to the State Hospital in November 2001.

The Commissioner and Haybar each denied the allegations relating to Willis's mental illness. Haybar's answer also included a counterclaim seeking damages for tortious interference with business expectancy.

On July 8, 2005, Haybar filed a motion for summary judgment, asserting that Willis's bipolar condition did not qualify as insanity as contemplated by section 26-37-305. Willis responded to the motion, asserting that her mental condition was an issue of fact. She also filed an affidavit with her medical records. These records substantiated a diagnosis of bipolar disorder dating from September 1992.

On July 26, 2006, the trial court entered an order granting Haybar's motion for summary judgment. The court found that Willis failed to submit evidence that she met the legal definition of insanity or that she had formally been adjudicated as insane. The court ruled, as an alternate basis, that Willis lacked the legal capacity to bring this suit. This appeal followed.

Arkansas Rule of Appellate Procedure-Civil 2(a) permits an appeal from a final order and other categories constituting exceptions not applicable here. The order must be final for

this court to have jurisdiction, and thus it is a matter we will consider even though the parties do not raise it. *Haile v. Arkansas Power & Light Co.*, 322 Ark. 29, 907 S.W.2d 122 (1995).

Under Arkansas Rule of Civil Procedure 54(b), an order that fails to adjudicate all of the claims as to all of the parties, whether presented as claims, counterclaims, cross-claims, or third-party claims, is not final for purposes of appeal. *Dodge v. Lee*, 350 Ark. 480, 88 S.W.3d 843 (2002). Although Rule 54(b) provides a method by which the trial court may direct entry of final judgment as to fewer than all of the claims or parties, where there is no attempt to comply with Rule 54(b), the order is not final and we must dismiss the appeal. *Id.* The fundamental policy behind Rule 54(b) is to avoid piecemeal appeals. *City of Corning v. Cochran*, 350 Ark. 12, 84 S.W.3d 439 (2002).

The order of summary judgment being appealed from in the present case did not contain a Rule 54(b) certification directing that a final judgment be entered as to only the appellant's complaint. The order failed to adjudicate Haybar's counterclaim, and parties desiring to appeal from an interlocutory order must comply with Rule 54(b). *See French v. Brooks Sports Ctr., Inc.*, 57 Ark. App. 30, 940 S.W.2d 507 (1997). The appeal presented has complied with neither Ark. R. App. P.-Civ. 2(a) nor Ark. R. Civ. P. 54(b), and therefore we lack jurisdiction and the appeal must be dismissed.

Dismissed.